IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

K.J.R., by and through her guardian, Next friend and mother, April Johnston,	)
An individual,	)
Plaintiff	)
v.	)
(1) Five Star Interlocal Cooperative, A special education cooperative in the State of Oklahoma;	)
(2) Cushing Public School District;	)
(3) Nancy Moss, individually and in her official capacity;	)
(4) Nancy Anderson, individually and in her official capacity.	)
Defendants.	)

COMPLAINT

Comes Now, Plaintiff K.J.R., by and through her next friend, mother and guardian, April Johnston, by counsel, and for her causes of action states as follows:

1. Plaintiff, KJR, was at all material times a student of Cushing Public Schools, receiving special education services from the Five Star Interlocal Cooperative, and a resident within the venue of this Court. Plaintiff's next friend, mother and guardian is April Johnston.

2. The Five Star Interlocal Cooperative ("Five Star") is an education cooperative created by the agreement of multiple Boards of Education of school districts within the State of Oklahoma to provide, inter alia, special education instruction and services to

students residing in and attending the Cushing Public School District. FSILC provided special education services to Plaintiff within the venue of this Court.

3. The Cushing Public School District is an authorized school district within the State of Oklahoma and the venue of this Court. The Cushing Public School District entered into contractual arrangements and agreed to participate in the Five Star cooperative for the provision of required special education services to students of the Cushing Public School District.

4. Five Star and Cushing Public Schools receives federal funds for its educational programs, including special education programs required by the IDEA, 20 USC § 1401, et seq., and is a "program or activity" receiving federal funds within the meaning of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a). These Defendants are political subdivisions of the State of Oklahoma and as such are a "public entity" as defined by the Americans with Disabilities Act, 42 U.S.C. § 12131.

5. Nancy Moss was at all material times an agent, employee and representative of Defendants Five Star and Cushing Public Schools. Moss was a special education teacher at the Five Star cooperative, and was the special education teacher of Plaintiff. At all material times, Moss was a resident of the State of Oklahoma, within the venue of this Court. At all material times, Moss was a member of the Individual Education Plan (IEP) team responsible for developing, creating, and implementing special education services for Plaintiff.

6. Nancy Anderson was at all material times an agent, employee, and representative of Defendants Five Star and Cushing Public Schools. Anderson was the Executive Director of Five Star providing special education services to Plaintiff. At all material

times, Anderson was a resident of the State of Oklahoma, within the venue of this Court. At all material times, Anderson was a member of the Individual Education Plan (IEP) team responsible for developing, creating, and implementing special education services for Plaintiff.

7. Plaintiff is a qualified individual with a disability. Plaintiff suffers from cogitative deficiencies, previously labeled as mental retardation, and learning disabilities. Plaintiff is disabled within the meaning of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. Plaintiff has been at all material times hereto identified as disabled under and eligible for services under, the IDEA, 20 USC § 1401, et seq.

8. All acts alleged herein occurred within the venue of this Court.

9. At the time of the events alleged herein, Plaintiff was a minor, age 17, and was enrolled as an 11th grader with Defendants Five Star and Cushing Public Schools.

10. During the Special Olympics in Stillwater, Oklahoma, between May 7-9, 2008, Defendant Moss told other personnel from Five Star, and hence Cushing Schools, that she believed Plaintiff was sexually active and was pregnant. Moss further made these statements in front of other Special Olympic participants, minors from Five Star and other schools. Moss explained her believe was because she witnesses Plaintiff dip an apple in ranch dressing before eating it.

11. During the 2008 Special Olympics, Moss further advised personnel from Five Star and Cushing Schools, and other participants, that she intended to require Plaintiff to take a pregnancy test.

12. Based on information and belief, Defendant Anderson was advised of Defendant's Moss' conduct, described herein. Defendant Anderson failed to prevent, restrain, or control Defendant Moss. Alternatively, Moss, and other personnel of Defendants failed to properly report and advise Five Star and Cushing Schools of Defendant Moss' statements and intentions to pregnancy test Plaintiff.

13. On or about May 20, 2008, Defendant Moss ordered, compelled, coerced, and required Plaintiff to take a pregnancy test, while Plaintiff was attending special education classes. Defendant Moss publicized that she was requiring the pregnancy test to personnel and students of Defendants Five Star and Cushing Schools. Defendant Moss further informed students and personnel of the test results, negative.

14. Prior to compelling the pregnancy testing of Plaintiff, Defendant Moss did, and was known to have, discussed sexual conduct and activities of students of Defendant Five Star and Cushing Schools. Such includes without limitation her allegation that another student was pregnant and Moss believed the father to be the student's step father. Moss was not disciplined, restrained, or controlled by Defendant's Five Star and Cushing Schools, nor by Defendant Anderson, for such statements and comments. Similarly, Moss described her own sexual experiences in front of her students. Despite knowing of such conduct, Defendants Five Star, Cushing Schools, and Anderson, failed to retrain, control or discipline Moss for her conduct. In so failing, Defendants Five Star, Cushing Schools, and Anderson, ratified, condoned, and tolerated Moss' conduct in discussing sexual topics with students, making accusations of incest, and compelling pregnancy testing of students.

15. After Plaintiff reported and complained to Defendant Anderson of objections to the above conduct, Defendant Anderson attempted to intimidate, coerce, restrain, bully, and intimated a denial of educational services for consulting an attorney and the media about these events.

16. The acts and omissions of Defendants Moss and Anderson were taken in the scope and course of their employment with Defendants Five Star and Cushing School District.

17. On or about May 1, 2009, Plaintiff timely provided notice to Five Star and Cushing Public School District pursuant to the Oklahoma Governmental Tort Claim Act of her claims. Defendants did not respond to the notice, which was deemed denied by operation of law ninety (90) days thereafter. Plaintiff timely files this action within 180 days of the denial of her tort claim notice.

Count 1: Disability Discrimination

18. All other paragraphs are incorporated herein.

19. Defendants Five Star and Cushing School District are recipients of federal funds and are a "program or activity" as defined in 29 U.S.C. § 794(b).

20. Defendant District is a political subdivision of the State of Oklahoma and is both the District and Five Star are public entities as defined in 42 U.S.C § 12131(1).

21. Plaintiff is a qualified individual with a disability as defined in the Rehabilitation Act of 1973, 29 U.S.C § 705, and the Americans with Disabilities Act, 42 U.S.C § 12131(2).

22. Since on or before May 7, 2009, Defendants District and Five Star discriminated against Plaintiff because of her disability and has denied her the benefits of the

services, programs, and activities of the special education services provided by Five Star and the Cushing School District all in violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a) and, in violation of the Americans with Disabilities Act, 42 U.S.C. § 12132.

23. The acts of the Defendants District and Five Start in violating the ADA and the Rehabilitation Act by discriminating Plaintiff because of her disability, and in denying her full participation in and the benefits of her educational rights, have been done with deliberate indifference to his legal rights and in bad-faith.

24. Defendants Five Star and Cushing School District do not compel pregnancy testing on non-disabled students. Similarly, they do not publicly disclose their beliefs that non-disabled students are pregnant.

25. As a result of the Disability discrimination, described above, Plaintiff has and will continue to suffer emotional distress and compensatory damages.

26. Defendant Anderson is in a position to control, apply for, accept, or reject the receipt of federal funds, and therefore is individually liable for her actions in permitting, condoning, ratifying, and failing to prevent the disability discrimination of Plaintiff.

27. The actions taken by Defendants, described herein, were taken under color of law.

28. The actions of the Defendants, described above, violated Plaintiff's right to equal protection under the law, under the United States and Oklahoma Constitutions, including but not limited to discriminating against Plaintiff because of her disability, described above, without such conduct being rationally related to legitimate objectives.

Count 2: Invasion of Privacy

29. All other paragraphs are included herein.

30. Plaintiff has a fundamental right of privacy, under both the Oklahoma and United States Constitutions, to engage or not engage in sexual conduct, or to procreate. Defendants violated Plaintiff's constitutionally protected right of privacy by inquiring of her sexual activity, compelling pregnancy testing of Plaintiff, and falsely disclosing to other students and personnel that Plaintiff was pregnant.

31. Defendants Five Star, Cushing School District and Moss, invaded Plaintiff's common law right to privacy, via intrusion upon seclusion, public disclosure of private facts, and false light portrayal, by informing students and personnel that Plaintiff was pregnant, was therefore sexually active, and compelling a pregnancy test of Plaintiff, and informing other students and personnel that the pregnancy testing was being performed on Plaintiff.

32. Defendants Five Star, Cushing School District and Moss acted recklessly and in reckless disregard to whether Plaintiff was pregnant, based on eating apples dipped in ranch dressing, in informing other students and personnel that Plaintiff was pregnant or concomitantly was sexually active. Alternatively, whether Plaintiff was sexually active is a personal, private fact, which these Defendants had no right or reason to publicly disclose.

33. Alternatively, if Defendants Moss and Anderson were acting outside their employment, they invaded Plaintiff's privacy as described herein.

Count 3: Negligence

34. All other paragraphs are incorporated herein.

35. Defendants Five Star and Cushing School District have a legal duty to supervise, maintain, and control their employees, including Moss and Anderson.

36. Defendants Five Star and Cushing School District breached its duty and negligently failed to properly investigate and respond to prior information of Defendant Moss disclosing private information about students, including whether they were sexually active, victims of incest, or pregnant. These Defendants further negligently failed to investigate and respond to Defendant Moss' initial comments during the Special Olympics that Plaintiff was pregnant, was therefore sexually active, and that she intended to compel a pregnancy test of Plaintiff. These Defendants failed to properly supervise, maintain and control Moss, or other of their employees who heard this information by continuing their employment, negligently supervising them, and negligently retaining their services.

37. Alternatively, if Defendant's Moss was acting outside the scope of her employment, she was negligent in failing to use discrete and proper manners to inquire of Plaintiff's mother as to any pregnancy impact or needs to be addressed in the IEP process for Plaintiff.

38. Alternatively, if Defendant Anderson was acting outside the scope of her employment, she was negligent in investigating Moss' conduct, both before the Special Olympics and during the Special Olympics, and failing to take effective remedial action to control, prevent, and supervise Moss' conduct in disclosing sexual allegations against students, in making sexual comments in front of students, and in compelling the pregnancy testing of Plaintiff.

Count 4: Substantive Due Process Violations

39. All other paragraphs are alleged herein.

40. Defendants Five Star and Cushing Public Schools are state actors within the meaning of the United States and Oklahoma Constitutions.

41. Acting under color of law, Defendants Five Star and Cushing School District, invaded Plaintiff's substantive due process rights by engaging in conduct which is beyond all bounds of decency, and shocking to the judicial conscious, in having special education students, with limited cognitive abilities, be publicly accused of sexual conduct, and being forced, compelled, and cajoled to undergo medical testing, and disclosing such testing to other students, school personnel, and Plaintiff's peers.

Count 5: FERPA Violations

42. All other paragraphs are included herein.

43. On or about March 27, 2009, Plaintiff, through counsel, requested educational records for Plaintiff pursuant to the Family Educational Records and Privacy Act ("FERPA") to be produced by Five Star.

44. Five Star has failed and refused to provide the requested educational records of Plaintiff.

45. Plaintiff is entitled to the production of all educational records, as requested, to be produced by Five Star and to recover attorney fees and costs in being required to bring suit to receive such records.

46. As a direct and proximate result of Defendant's conduct and omissions, described above, Plaintiff has and will continue to suffer emotional distress, humiliation, embarrassment and pain of mind and body in an amount in excess of $75,000.00.

47. The acts of Defendants were willful, purposeful, and in reckless disregard for the legal rights of another.

Wherefore, Premises Considered, Plaintiff request that judgment be entered in her favor, and against Defendants, jointly and severally, in an amount in excess of $75,000.00, together with interest, costs, fees, and all other legal or equitable relief to which she is entitled.

Jury Trial Demanded

Attorney Lien Claimed

Respectfully Submitted,

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